



**U.S. Department of Justice**

*Executive Office for United States Trustees*

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November 20, 2009

Ben Bernanke  
Chairman  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, N.W.  
Washington, DC 20551

Re: Docket No. R-1370

Dear Chairman Bernanke:

In response to the Federal Reserve Board's (the "Board's") call for comments pertaining to the second set of proposed rules<sup>1</sup> implementing the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (2009) (the "Credit Card Act"), the Executive Office for United States Trustees ("EOUST") respectfully submits the following comments.

EOUST is the component of the Department of Justice responsible for supervising the administration of bankruptcy cases and bankruptcy trustees, and for approving agencies to perform nonprofit budget and credit counseling services pursuant to 11 U.S.C. § 111. EOUST must review thoroughly the qualifications of such agencies, and must determine whether applicants fully satisfy the applicable standards set forth in 11 U.S.C. § 111 and regulations pursuant to section 111.<sup>2</sup>

Section 111(b) of title 11 and the Interim Final Rule govern the approval by United States Trustees, through EOUST, of nonprofit budget and credit counseling agencies for inclusion under 11 U.S.C. § 111(a)(1) on publicly available agency lists in one or more United States district courts. Section 111 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become an approved nonprofit budget and credit counseling agency only after the United States Trustee has thoroughly reviewed the applicant's

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<sup>1</sup>*Truth in Lending: Proposed Rule*, 74 Fed. Reg. 54124-332 (October 21, 2009) (the "TILA Rule").

<sup>2</sup>*Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instruction Course by United States Trustees*, 71 Fed. Reg. 38076-85 (July 5, 2006)(codified at 28 C.F.R. §§ 58.15-58.17, 58.25-58.27)(the "Interim Final Rule").

(a) qualifications, and (b) services. 11 U.S.C. § 111(b)(1). A United States Trustee has statutory authority to require an applicant to provide information with respect to such review. 11 U.S.C. § 111(b)(1).

After completing that thorough review, a United States Trustee may approve a nonprofit budget and credit counseling agency only if the agency establishes that it fully satisfies all requisite standards. 11 U.S.C. § 111(b). Among other things, an applicant must establish it will (a) provide qualified counselors, (b) maintain adequate provision for safekeeping and payment of client funds, (c) provide adequate counseling with respect to client credit problems, and (d) deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides. 11 U.S.C. § 111(c)(1).

Section 201(c) of the Credit Card Act, requires the Board to issue guidelines by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of the toll-free number disclosed on the periodic statement from which consumers can obtain information about accessing credit counseling and debt management services. The Credit Card Act requires that these guidelines ensure that consumers are referred “only [to] those nonprofit and credit counseling agencies approved by a United States bankruptcy trustee pursuant to [11 U.S.C. 111(a)].”

The Board proposes to implement Section 201(c) of the Credit Card Act in the TILA Rule at § 226.7(b)(12)(iv). Proposed § 226.7(b)(12)(iv)(A) states that a card issuer must provide, through the toll-free telephone number disclosed pursuant to proposed § 226.7(b)(12)(i)(E) or (ii)(E), the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in the State in which the billing address for the account is located or the State specified by the consumer. Specifically, proposed § 226.7(b)(12) (iv)(A) requires a card issuer to include:

The name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in the State in which the billing address for the account is located or the State specified by the consumer.

Although an agency included in the list of approved nonprofit budget and credit counseling agencies is approved to issue credit counseling certificates, such approval does not constitute a government guarantee or endorsement of the quality of the agency’s services. Accordingly, EOUST requests that the Board add the following language to proposed § 226.7(b)(12) (iv)(A):

A card issuer shall include the following language in any written or electronic disclosure pursuant to Title II of the Act containing the Department of Justice uniform resource

locator or web address for the list of those nonprofit pre-bankruptcy budget and credit counseling agencies approved pursuant to section 111 of title 11, United States Code:

"The list of approved credit counseling agencies comprises those entities that the United States Trustee Program has determined meet the minimum requirements for nonprofit pre-bankruptcy budget and credit counseling. By including a credit counseling agency on the list, the United States Trustee Program does not endorse or recommend any particular agency.

Entities appearing on the list may provide counseling services other than pre-bankruptcy budget and credit counseling. The United States Trustee Program has not reviewed the content of these other services."<sup>3</sup>

This disclaimer protects consumers who otherwise might infer that approval means all agency actions automatically carry the approval or endorsement of the federal government. In addition, EOUST requests the following conforming changes, in italics, to the FRB's proposed comments 7(b)(12)(iv)–6 . Those comments should read:

Proposed comment 226.7(b)(12)(iv) would clarify that, when providing the toll-free telephone number on the periodic statement pursuant to § 226.7(b)(12)(iv), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by § 226.7(b)(12)(iv), so long as the information provided on the Web site complies with § 226.7(b)(12)(iv), *including the language required by § 226.7(b)(12)(iv)(A)*. The Web site address disclosed must take consumers directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations.

74 Fed .Reg. at 54143.

*7(b)(12)(iv) Provision of information about credit counseling services.*

6. *Web site address.* When making the repayment disclosures on the periodic statement pursuant to § 226.7(b)(12), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by § 226.7(b)(12)(iv), so long as the information provided on the Web site complies with § 226.7(b)(12)(iv), *including the language required by § 226.7(b)(12)(iv)(A)*. The Web site address disclosed must take consumers

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<sup>3</sup>This language should follow the existing proposed § 226.7(b)(12) (iv)(A), which appears at 74 Fed .Reg. at 54214.

directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations.

74 Fed .Reg. at 54289.

EOUST strives to promote consumer protection through the application review procedures and ongoing oversight, and believes the requested language will promote consumer understanding of its approval and oversight role concerning nonprofit budget and credit counseling agencies. In closing, we thank you for the opportunity to express our opinions concerning the Credit Card Act.

Sincerely,

/s/ Wendy S. Tien

Wendy S. Tien  
Deputy Assistant Director  
for Review and Oversight